IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RICHARD COCHRAN, et al., Plaintiffs, vs. VOLVO GROUP NORTH AMERICA, LLC, Defendant.	Civil Action No. 1:11-cv-00927

DEFENDANT'S MOTION TO COMPEL AND FOR SANCTIONS

Defendant Volvo Group North America, LLC ("Volvo"), by and through undersigned counsel and pursuant to Federal Rule of Civil Procedure 37(a) and Local Rule 37.1, respectfully moves this Court for an Order compelling disclosure and for sanctions dismissing the claims of Plaintiffs Frank Beatty III, Ronnie Choosewood, Tom Dougherty, Mark Ebel, Mike Faustini, Wayne Fox, Lawrence Hodge, Semio Express, Inc., and Harvey West, based on these Plaintiffs' refusal to cooperate in discovery and/or refusal to comply with the Court's December 11, 2013 Order. Volvo further requests an expedited hearing on this motion to be conducted by telephone pursuant to Local Rule 37.1(b). In support of the Motion, Volvo shows the Court as follows:

1. On December 3, 2013, Volvo filed a motion to compel responses to its discovery requests and to have plaintiffs appear for deposition in this district [Dkt. #126].

2. The Court held a hearing on December 10, 2013 and granted the Defendant's motion in open court. The Court ordered Plaintiffs to fully and completely

respond to Volvo's discovery requests and to appear for deposition in this district. Further, the Court represented that further motions to compel would likely be met with sanctions for non-compliance, including the sanction of dismissal.

3. In its Order dated December 11, 2013 [Dkt. #128], the Court set forth a procedure for supplemental production and for the scheduling and taking of depositions, described below:

a. Volvo was to select twenty days between the period of February 17 and March 31, 2014, for Plaintiffs' depositions to be held at 9:00 and 2:00 on each of the days selected.

b. After being informed by Volvo of the chosen dates, counsel for Plaintiffs would coordinate the scheduling of the individual Plaintiffs' depositions from among those dates selected by Volvo.

c. After the parties worked together to resolve any identified scheduling conflicts, Volvo would notice the depositions at the chosen dates and times; for those plaintiffs who failed to respond or select a date/time, Volvo would simply notice the deposition at time convenient to Volvo.

d. No later than fourteen days prior to each individual Plaintiff's deposition, each Plaintiff would be required to provide full and complete responses to Volvo's interrogatories and requests for production.

4. Volvo complied with the procedure described above, providing Plaintiffs' counsel on December 16, 2013, with the dates it sought to schedule depositions. Volvo

received no objection to the chosen dates, nor any indications that Plaintiffs were unavailable on any particular dates. On January 27, 2014, Volvo noticed the depositions to occur on fourteen different dates, beginning February 27 and lasting through March 18, for twenty-six individual Plaintiffs.[1]

5. Nine individual Plaintiffs—Frank Beatty, Ronnie Choosewood, Tom Dougherty, Mark Ebel, Mike Faustini, Wayne Fox, Lawrence Hodge, Semio Express, and Harvey West—have refused to participate in the discovery process. They have refused to supplement their production to provide full and complete responses to Volvo's interrogatories and requests for production, and/or have refused to attend a deposition in this district, as required by the Court's December 11, 2013 Order.

6. Chad Hansen, Counsel for Volvo, and Cory Fein, counsel for the nine individual Plaintiffs named above, met and conferred by telephone on February 24, 25 and 26, 2014—and corresponded multiple times by email—in an attempt to resolve this dispute regarding supplementation and scheduling of depositions. The fourteen-day time period for compliance has passed with respect to most of these nine Plaintiffs. Plaintiffs'

[1] At the time of the December 10, 2013 hearing, there were 37 named plaintiffs. Subsequently, 11 Plaintiffs voluntarily dismissed their claims against Volvo [*see* Dkt. #129] and the Court's order dismissing these eleven plaintiffs was entered January 21, 2014 [*see* Dkt. #130]. Thus, there remained 26 Plaintiffs subject to the discovery process contained in the Court's December 11, 2013 order. Of those, seven (Rafi Al-Amin, Richard Cochran, Ronald Eberhart, George Elliott, Chip Herron, Alvin Norden, and Mehmet Yurtseven) are in substantial compliance with their discovery obligations and have committed to attending their depositions in North Carolina. Volvo is still working with Plaintiffs' counsel to resolve discovery disputes as to ten additional Plaintiffs: Richard Cowan, Dawson Lines, Paul Elmore, Roy Hall, J&K Ross, John Long, Orcutt Transportation Services, LLC, Charles Quail, Rafter B. Trucking, and Stoney Hill Express, LLC. This motion is brought as to the remaining nine Plaintiffs who have refused to participate in the supplementation and/or deposition process and should be dismissed as a sanction for their discovery violations.

counsel represented to Volvo's counsel that no discovery supplementation would be forthcoming from any of the above-named Plaintiffs—including those whose fourteen day compliance period has not yet run—and that those Plaintiffs who have failed to commit to attend the noticed depositions will not appear for a deposition in this district.

7. Although the above-named Plaintiffs have been ordered to produce supplemental discovery and appear for deposition and have been warned that failure to comply with the Court's Order may lead to dismissal of their claims, these Plaintiffs have nonetheless refused to comply. Plaintiffs should thus be subject to the sanction of dismissal of their claims pursuant to Federal Rule of Civil Procedure 37(b)(2) and 37(d), as they have failed to obey a discovery order to supplement production, and have indicated they will not comply with the Court's Order to appear for deposition in this district.

8. While these nine Plaintiffs have not agreed to voluntarily dismiss their claims, Cory Fein, counsel for Plaintiffs, has acknowledged that there is no good faith basis in fact or in law to oppose a motion seeking the sanction of dismissal of these Plaintiffs' claims due to their non-compliance with discovery and the Court's order.

9. The parties have agreed that this discovery dispute can be ruled upon in a telephone conference of no more than 30 minutes. Therefore, pursuant to Local Rule 37.1(b), Volvo requests an expedited hearing by teleconference without briefing by the parties.

10. Volvo does not seek and hereby waives its reasonable expenses, including attorneys' fees, caused by the Plaintiffs' failure and refusal to comply with discovery, as it is entitled to recover under Rule 37(b)(2).

11. A proposed order granting such relief is filed herewith.

WHEREFORE, Defendant Volvo respectfully requests that the Court grant its Motion and:

1. Enter an Order sanctioning Plaintiffs Frank Beatty, Ronnie Choosewood, Tom Dougherty, Mark Ebel, Mike Faustini, Wayne Fox, Lawrence Hodge, Semio Express, and Harvey West, by dismissing their claims without prejudice pursuant to Rule 37(b) and 37(d) for refusal to comply with the Court's Order to fully respond to Volvo's discovery requests and/or for refusing to appear for deposition, in violation of the Court's order requiring appearance for deposition in this district; and

2. Provide such further and additional relief as the Court deems just and proper.

Respectfully submitted, this the 28th day of February, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on February 28th, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filing to the following:

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I hereby certify that I also have mailed the documents to the following non CM/ECF participants: None.

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